

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 March 2018
Report of: Director Of Legal (Interim)
Subject/Title: Village Green Application: Application to Register Land adjoining Swift Road, Bamford, Rochdale as a Town or Village Green

1.0 Purpose of Report

- 1.1 This report deals with an application by Ms Janice Lesley Arden under section 15(2) of the Commons Act 2006 to register an area of land adjoining Swift Road, Bamford, Rochdale as a new village green under section 15 of the Commons Act 2006.

2.0 Recommendations

- 2.1 That the Committee receives and accepts the report of Timothy Jones, Barrister (attached as Appendix A), and
- 2.2 That the application is rejected and the application land is not registered as a Town or Village Green, and
- 2.3 Written notification of the Committee's decision is sent to Rochdale Borough Council within 7 days of the date of publication of the minutes of this meeting.

3.0 Reasons for Recommendation

- 3.1 The application is recommended for rejection because an Independent expert (Timothy Jones, Barrister) has concluded that in relation to the application land the Applicant has not demonstrated that the use of the land took place as of right.
- 3.2 A failure to establish this fact means that the application should be rejected.

4.0 Ward Affected

- 4.1 n/a

5.0 Local Ward Members

- 5.1 n/a

6.0 Financial Implications

- 6.1 There would be a cost in the event of an application for judicial review, however the Council is the registration authority having accepted a delegation of powers from Rochdale Borough Council (“RBC”) in accordance with s.101 of the Local Government Act 1972 and therefore has a statutory duty to decide this application.

7.0 Legal Implications

- 7.1 There is no right of appeal against a Committee decision not to register land as a village green. The route for any challenges would be via judicial review.
- 7.2 Although the findings of the Independent expert are recommended for acceptance by the Committee, the Committee is not bound to follow them.

8.0 Risk Assessment

- 8.1 It is important that decisions are taken in a way that demonstrates fairness and complies with the rules of natural justice. To that end the Application has been considered by an independent expert who advised that there was no need for the Council to a non statutory public inquiry and that the application could be determined without such an Inquiry.

9.0 Background and Options

- 9.1 The Council is the registration authority for village greens and responsibility for this function is delegated to the Public Rights of Way Committee under the Council’s constitution. A delegation of powers to determine this application on behalf of RBC was accepted by the Public Rights of Way Committee at its meeting on 13th June 2016.
- 9.2 The application is dated 23rd June 2015 and was submitted to RBC by Mrs Janice Lesley Arden. The application relates to a piece of land described in the application form as “Village Green” in the location at “Swift Road, Bamford, Rochdale” and it was advertised by RBC in accordance with the statutory requirements. The land, the subject of the application (‘the application land’), is shown marked “Village Green” on the map attached as Appendix B.
- 9.3 The application is made pursuant to section 15(2) of the Commons Act 2006. That requires the applicant to demonstrate on the balance of probabilities that the land was used:
- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
 - b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
 - c. as of right

- 9.4 The application was initially accepted as valid by RBC's Legal Services Section. When accepting the application as valid RBC's Legal Services Section also confirmed that there had been no trigger or terminating event in respect of the application land and the application could be processed.
- 9.5 RBC undertook a public consultation exercise providing for a period of 6 weeks when the plan of the application lane was available for inspection at the Council's offices and the provision of site notices explaining the procedure for making representations. Those notices were dated 22nd July 2015 and noted that any objection should be made in writing to RBC prior to the expiration of the consultation period on 2nd September 2015. The application was also published in the Rochdale Observer on 22nd July 2015.
- 9.6 RBC in its capacity as landowner objected to the application via a letter dated 2nd September 2015 and a copy of that letter is attached as Appendix C. A copy of that objection was sent to the applicant who responded by way of letter dated 5th May 2015 and a copy of that letter is attached as Appendix C.
- 9.7 As an objection had been received to the application it was forwarded to an Independent expert for consideration by the Legal Services Section of Cheshire East Council.
- 9.8 The Independent Expert was provided with copies of the application, plan and supporting information in the form of witness statements and correspondence as well as RBC's objection letter and the response received from the applicant.
- 9.9 The Independent Expert's report is attached as Appendix A. It takes account and considers all of the written information produced to the Independent expert.
- 9.10 The Independent expert concisely details the background to the acquisition of the land by RBC in paragraphs 1 to 4 of his report and refers to conditions on 2 planning permissions issued in respect of the application land in 1983 and 1985 which required that the land be provided "for use by the general public". The application land was subsequently purchased by RBC from the developers in 1988.
- 9.11 The application land was acquired by RBC for the purposes of the Town and Country Planning Act 1971 with particular regard to the statement "The Council are to maintain the land as a landscaped area".
- 9.12 The Independent expert considered in paragraph 9 of his report the basis of the objection submitted by the Property Services Section of RBC to the application. The second of which being that the application land had been used "by right" rather than "as of right" by the applicant and local residents.

9.13 In this paragraph the Independent expert confirms the view of RBC's Property Services Section that in order for the application land to have been used "as of right" it would have had to have been used without force, without stealth and without permission. The objection states that the application land has been used with permission from RBC due to:

"The development of the surrounding housing estate was subject to the following condition: "The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the local planning authority thereafter."

9.14 In paragraph 11 of the report the Independent Expert details his findings in relation to the statements submitted in support of the application and whilst noting that they do not fully address the issue as to whether the application land had been used "as of right" or "by right" some say that they had been told that the application land was for communal or resident's use.

9.15 In paragraphs 12 to 14 of his report the Independent Expert considers the relevant case - law and legislation pertinent to this application and then carefully analyses the facts relating to this application in the following paragraphs.

9.16 In his overall conclusion at paragraphs 22-23 the Independent Expert concludes that he is of the firm opinion that no part of the land should be registered as a village green, and recommends that the land is not registered and that there is no need to hold a Public Inquiry.

9.17 The basis of the Independent Expert's conclusion is that in following case law RBC had given permission to the public to use the land and that those residents who had been informed that the land was for communal or resident's use had been correctly informed. This is also apparent by the Independent Expert's finding from the submitted witness statements that the purposes for which members of the public state to have used the land for is entirely consistent with land being held for such purposes.

9.18 A draft copy of the report has been circulated to the Applicant and the Objectors for them to review and check for accuracy.

10. **Applicant's Comments**

10.1 Having been sent a copy of the draft report for consideration the applicant made the following comments:

"With reference to our application for Village Green status we were very disappointed to receive the news that Counsel, acting on behalf of Cheshire East Council had recommended that our application be rejected. It is particularly difficult for us as our friends in our adjoining Ward of Norden had their Village Green application recommended for

approval. We really could see no, or very little, difference between the two applications. Of course Rochdale BC did not support our application which did not help.

The result has hinged on a technicality that the residents used the Bamford Village Green 'with permission' from Rochdale Council even though we were not aware they actually owned the land. Indeed, it has never been in the public domain that Rochdale Council had re-purchased this small plot of land for the nominal sum of £1 from the Housing Developer.

In no way detracting from the success of the Norden application, on the surface, there would appear to be a contradiction here between the results of the two VG Applications in terms of how the land was used with/without permission. It is hard to see why their use was any different, other than Rochdale BC objected to the Bamford VG Application but not to Norden's.

Although we do respect the great experience of the Barrister, to lose on such a small, unimportant point seems heartbreaking. When the residents bought these houses in the Swift Road area, clearly marked on their deeds on this piece of land are the words "Village Green". So that was what it was intended to be – a small piece of recreational land in an area where there are no free green spaces for residents to use. The residents were firm in their belief that this was a designated Village Green. Rochdale have already tried to sell this piece of land once for a few more houses which would change the whole aspect of this attractive residential area. Currently the land has been withdrawn from sale but Village Green status would keep it safe from future development. Both Wards fought hard and fairly to save their precious pieces of green space. As things stand, it would appear that Norden has won and we have lost. This does not help community cohesion but we are pleased that our neighbours have saved their Green.

I hope you will all read this short report and look favourably on our request for Village Green status to be granted for the small Swift Road site. It means everything to us and to future generations."

11.00 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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